

1 ALSCHULER GROSSMAN LLP  
Marshall B. Grossman - (SBN 35958)  
2 William J. O'Brien - (SBN 99526)  
Tony D. Chen - (SBN 176635)  
3 Dominique N. Thomas - (SBN 231464)  
The Water Garden  
4 1620 26th Street  
Fourth Floor, North Tower  
5 Santa Monica, CA 90404-4060  
Telephone: (310) 907-1000  
6 Facsimile: (310) 907-2000

7 BINGHAM McCUTCHEN LLP  
Donn P. Pickett (SBN 72257)  
8 Mary T. Huser (SBN 136051)  
Adrienne L. Taclas (SBN 166115)  
9 Three Embarcadero Center  
San Francisco, CA 94111-4067  
10 Telephone: (415) 393-2000  
11 Facsimile: (415) 393-2286

12 Attorneys for Defendant and Counterclaimant,  
BLOCKBUSTER INC.

13 UNITED STATES DISTRICT COURT  
14 NORTHERN DISTRICT OF CALIFORNIA

15 NETFLIX, INC., a Delaware corporation,

16 Plaintiff,

17 v.

18 BLOCKBUSTER, INC., a Delaware  
19 corporation, DOES 1-50,

20 Defendant.

21 AND RELATED COUNTERCLAIMS  
22  
23  
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Case No. C 06 2361 WHA (JCS)

**DECLARATION OF MARSHALL B.  
GROSSMAN**

Hearing Date: TBD  
Time: 9:30 A.M.  
Courtroom: A, 15th Floor  
Magistrate Judge: Joseph C. Spero

Complaint Filed: April 4, 2006

DECLARATION OF MARSHALL B. GROSSMAN

LA/40378472 2/3006338-0000325413

1 I, Marshall B. Grossman, declare as follows:

2 I am a partner in the law firm of Alschuler Grossman LLP, the attorneys of record herein  
3 for Defendant and Counterclaimant Blockbuster Inc. ("Blockbuster") in this action, and have  
4 personal knowledge of each and all of the facts stated in this declaration. If called to testify as a  
5 witness, I could and would do so competently.

6 1. Have you ever expressed any opinion on the validity of either the '450 patent or  
7 '381 patent at issue in this case?

8 Answer: No

- 9 • How often?  
10 • When?  
11 • To whom?  
12 • Was that opinion expressed orally or in writing?  
13 • If in writing, was the writing preserved?

14 2. Have you ever mentioned the opinion letter written by Baker & Botts as to the  
15 validity of the '450 patent to anyone at Blockbuster?

16 Answer: No, however, Blockbuster mentioned the existing opinion to me.

- 17 • How often?

18 Answer: Inception of the litigation

- 19 • When?

20 Answer: Inception of the litigation

- 21 • To whom?

22 Answer: Judy Norris

- 23 • Was that comment expressed orally or in writing?

24 Answer: Orally

- 25 • If in writing, was the writing preserved?

26 3. Have you mentioned the opinion letter written by Blakely Sokoloff Taylor &  
27 Zafman as to the validity of the '381 patent to anyone at Blockbuster?

28

1           **Answer:** No, other than in the context of Netflix's subpoena of the Alschuler Grossman  
2 law firm.

- 3           •       How often?
- 4           •       When?
- 5           •       To whom?
- 6           •       Was that comment expressed orally or in writing?
- 7           •       If in writing, was the writing preserved?

8           4.     Have you ever discussed with anyone at Blockbuster the general subject matter of  
9 the validity of the '381 patent?

10           **Answer:** Yes

- 11           •       How often?  
12                   **Answer:** Over the course of the litigation

- 13           •       When?  
14                   **Answer:** Over the course of the litigation

- 15           •       To whom?  
16                   **Answer:** Judy Norris and Bryan Stevenson

- 17           •       Was that discussion oral or in writing?  
18                   **Answer:** Oral

- 19           •       If in writing, was the writing preserved?

20           5.     Have you ever discussed with anyone at Blockbuster the general subject matter of  
21 the validity of the '450 patent?

22           **Answer:** Yes

- 23           •       How often?  
24                   **Answer:** Over the course of the litigation

- 25           •       When?  
26                   **Answer:** Over the course of the litigation

- 27           •       To whom?

1                   **Answer:** Judy Norris and Bryan Stevenson

2                   •       Was that discussion oral or in writing?

3                   **Answer:** Oral

4                   •       If in writing, was the writing preserved?

5           6.     Have you made any comment to anyone at Blockbuster about the evidence  
6 concerning the validity of the '381 patent?

7                   **Answer:** Yes

8                   •       How often?

9                   **Answer:** Over the course of the litigation

10                  •       When?

11                  **Answer:** Over the course of the litigation

12                  •       To whom?

13                  **Answer:** Bryan Stevenson, Judy Norris, and the Board of Directors and  
14 members thereof

15                  •       Was that comment made orally or in writing?

16                  **Answer:** Orally

17                  •       If in writing, was the writing preserved?

18           7.     Have you made any comment to anyone at Blockbuster about the evidence  
19 concerning the validity of the '450 patent?

20                  **Answer:** Yes

21                  •       How often?

22                  **Answer:** Over the course of the litigation

23                  •       When?

24                  **Answer:** Over the course of the litigation

25                  •       To whom?

26                  **Answer:** Bryan Stevenson, Judy Norris, and the Board of Directors and  
27 members thereof

28

1                   •       Was that comment made orally or in writing?

2                   **Answer:** Orally

3                   •       If in writing, was the writing preserved?

4           8.     Have you had any communications with anyone in your office commenting on  
5 conversations with Blockbuster that in any way related to the validity of the '381 patent?

6           **Answer:** Yes

7                   •       How often?

8                   **Answer:** Over the course of the litigation

9                   •       When?

10                  **Answer:** Over the course of the litigation

11                  •       To whom?

12                  **Answer:** I don't recall specific conversations, but any conversations  
13 would have been with Bill O'Brien, Tony Chen, and/or Dominique Thomas

14                  •       Was that communication oral or in writing?

15                  **Answer:** Both oral and in writing

16                  •       If in writing, was the writing preserved?

17                  **Answer:** Yes

18           9.     Have you had any communications with anyone in your office commenting on  
19 conversations with Blockbuster that in any way related to the validity of the '450 patent?

20           **Answer:** Yes

21                  •       How often?

22                  **Answer:** Over the course of the litigation

23                  •       When?

24                  **Answer:** Over the course of the litigation

25                  •       To whom?

26                  **Answer:** I don't recall specific conversations, but any conversations  
27 would have been with Bill O'Brien, Tony Chen, and/or Dominique Thomas

28

1 • Was that communication oral or in writing?

2 **Answer:** Both oral and in writing

3 • If in writing, was the writing preserved?

4 **Answer:** Yes

5 10. Have you ever discussed the likelihood that either the '450 patent or the '381  
6 patent will be found to be valid?

7 **Answer:** No

8 • How often?

9 • When?

10 • To whom?

11 • Was that opinion discussion oral or in writing?

12 • If in writing, was the writing preserved?

13 I declare under penalty of perjury under the laws of the United States of America that the  
14 foregoing is true and correct.

15 Executed on April 27, 2007 in *Santa Monica* Los Angeles, California.

16   
17 Marshall B. Grossman

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PROOF OF SERVICE

I am over 18 years of age, not a party to this action and employed in the County of Los Angeles, California at 355 South Grand Avenue, Suite 4400, Los Angeles, California 90071-3106. I am readily familiar with the practice of this office for collection and processing via electronic transmission that same day in the ordinary course of business.

Today I served the attached:

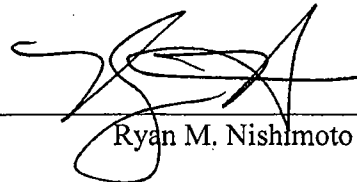
**DECLARATION OF MARSHALL B. GROSSMAN**

☒ (BY ELECTRONIC TRANSMISSION) This document was transmitted, without exhibits, by electronic transmission from ryan.nishimoto@bingham.com and the transmission was reported as complete and without error. I then caused the transmitting e-mail account to properly issue a report confirming the electronic transmission.

Susan J. Harriman, Esq.  
Eugene Paige, Esq.  
KEKER & VAN NEST, LLP  
710 Sansome Street  
San Francisco, CA 94111-1704  
Telephone: (415) 391-5400  
Facsimile: (415) 397-7188  
Email: sharriman@kvn.com  
Email: epaige@kvn.com

Michael Raiff, Esq.  
Rob Walters, Esq.  
Dan Kelly, Esq.  
Vinson & Elkins LLP  
Trammell Crow Center  
2001 Ross Avenue  
Suite 3700  
Dallas, TX 75201-2975  
Telephone: (214) 220-7700  
Facsimile: (214) 220-7716  
Email: mraiff@velaw.com  
Email: rwalters@velaw.com  
Email: dkelly@velaw.com

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made and that this declaration was executed on April 27, 2007.



Ryan M. Nishimoto